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# *The Labour of Art:*

A Report to the Honourable Minister Ian Waddell, Minister of Small Business, Tourism and Culture on the working conditions and environment for B.C. Artists.

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# Executive Summary

## A. Working Conditions for Artists

1. The Province has amended the *Employment Standards Act* (E.S.A.), and Regulations to provide significant protection to artists. The amendments to the *Employment Standards Act* are sufficient although fine tuning may be required, particularly in the area of trust funds for child actors. In order to eliminate unnecessary cost and bureaucracy, block trust funds should be investigated and developed.

2. The *Workers' Compensation Act* and the Occupational Health & Safety Regulation have been amended to extend coverage to performing artists. The extension of Workers' Compensation benefits to performing artists and the movie industry has been successful. Written guidelines are required to ensure flexibility of enforcement of health and safety regulations in the artistic work place.

3. An Art Agency Agreement Act should be enacted to provide minimum protections to visual artists and crafts people by requiring a written contract between them and agents who deal with their works. Issues which must be dealt in such a contract include ownership of the work(s), rates and charges, and terms of payment. A model contract should be appended to the Act to facilitate compliance and reduce costs for all parties.

4. Status of the artist legislation would extend bargaining rights to artists who are independent contractors. However, status of the artist legislation, whether by amendment to the Labour Code or by stand alone legislation and regardless of whether it utilizes a dedicated Tribunal or the existing B.C. Labour Relations Board, is a major initiative with wide ranging ramifications from both a labour relations and cost perspective. Broader consultation with the artistic community and the Ministry of Labour is required before enacting such legislation, since there is no consensus on the issue. If the decision is made to proceed with such an initiative, status of the artist legislation should be contained in a separate statute similar to the *Fishing Industry Collective Bargaining Act*, R.S.B.C. 1996 C. 150, and should utilize the B.C. Labour Relations Board. The Labour Board would require additional artist Vice Chairs and increased funding.

5. The Ministry should assist in the creation of a cultural sectoral council composed of artists, engagers/producers, labour leaders, business people, educators and government representatives in order to explore concerns related to human resource development in the sector and identify possible solutions. Government funding, at least at the initial stages, will be required.

6. An artists' legal advice program, to be funded at least in part by the Legal Services Plan, should be investigated in conjunction with the Ministry of the Attorney General.

Lawyers with expertise in legal matters affecting artists would provide artists with free summary legal advice on any issue related to their art. This would require additional funding for the Legal Services Plan.

7. The Ministry should develop a method to disseminate information in an electronic format to facilitate education and communication within the cultural sector and to provide easy access to model contracts, government forms, grant applications and other documents. This could be accomplished either by the development of a comprehensive ministry website or by additions to an independent site.

B. Financial Issues

1. The Ministry should work with the Ministry of Finance to develop tax incentives or credits and to consider relief from provincial sales tax on original art works in order to promote artistic endeavours.

2. Funding of the arts should be reviewed and increased. At a minimum, government funding should recognize the financial burden on arts organizations caused by government initiatives, such as Workers' Compensation coverage, and should be increased to offset these additional costs.

3. The B.C. Government should work with the industry to examine the need for a sound recording facility capable of accommodating major orchestras (70 - 100 musicians) for recording TV and movie sound tracks and, if warranted, explore the viability of expanding the sound recording infrastructure to include such a studio. Such an initiative would be consistent with government policy of supporting the film industry in the Province.

Introduction

Why single out the cultural sector for particular government attention and assistance?

The historical value of a society is frequently measured by the contributions of its artists. The arts enrich society. Yet the important role artists play in the culture and economy is seldom recognized or reflected in their financial position:

> "Since creative and performing artists are major contributors to society, they have the right to expect the opportunities and resources that are necessary to pursue their respective crafts. Society has been too slow in recognizing the contributions that artists make, and consequently, unlike educational, scientific and political institutions, many artists and arts organizations lack the proper financial means, materials, equipment, and facilities to create and perform in a way that is compatible with the human dignity and respect and conducive to high quality artistic masterpieces."[1]

Unfortunately the very nature of art frequently precludes success in a market driven society. Art is often provocative and experimental and therefore cannot be purely market driven.

Consequently, income levels for those employed in the artistic sector are generally lower than for other B.C. workers. The stereotype of the starving artist is supported by statistics. Few artists work full-time and even those who do earn approximately 20% less than the provincial average. Many artists require a second job to support themselves. The number of self-employed individuals in the cultural labour force is approximately double that in the labour force as a whole (29% versus 15%).[2] The majority of artistic workers are self-employed, while an additional 24% work both as self-employed individuals and as employees.[3] In 1982 the Applebaum-Hébert Report of the Federal Cultural Policy Review Committee noted:

> "It is clear to us that the largest subsidy to the cultural life of Canada comes not from governments, corporations or other patrons, but from the artists themselves, through their unpaid or underpaid labour. When creative activity is diminished because many artists are unable to earn a decent living something is lost to us all,

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[1] **P.D. Schafer**, *A Cultural Survey of B.C.*, (January, 1972), at 16.

[2] **Canadian Conference of the Arts**, *The Cultural Sector's Message to the Federal Government Regarding the Fiscal Dividend*, Pre-budget submission to the Standing Committee on Finance, (August 27, 1998), at 3.

[3] ibid. at 6 and Final Report of the Working Group on cultural policy for the 21st Century, CCA, June, 1998.

and our entire culture fails to fulfil its promise."[4]

That observation is equally true today as artists continue to subsidize their art through low income and inadequate working conditions. These conditions prevail notwithstanding the fact the artistic community is highly educated and multi-skilled. To be an artist requires incredible dedication and discipline.

In addition, the arts contribute to the economics of the Province vis-à-vis employment and tourism. The cultural work force has grown rapidly in recent years. In 1993 the Thompson Commission suggested there were 22,000 cultural workers in B.C. 1996 census figures indicate 54,000 people are employed in the cultural sector.[5] Recent Ministry estimates are that 60,000 are now employed in the cultural sector. Much of this growth is attributable to the film industry.

## Background

For many years, governments in Canada directed their attention to developing the arts. The Province of British Columbia has initiated several cultural directives. Reports from the early 70's consistently recommended increased spending and an examination and expansion of arts education. Various administrations have struggled to develop a cultural policy for B.C. Nonetheless, B.C.'s funding of the arts has consistently remained significantly below the national average. Despite continual funding shortages, the arts have flourished in B.C.

By the early 90's the focus shifted from cultural development to the status of the artist. In February, 1993, then Minister of Small Business, Tourism and Culture, Darlene Marzari commissioned an advisory committee to examine the status of British Columbian's artists and to make recommendations to improve their daily working conditions. The B.C. Advisory Committee on the Status of the Artist ("the Advisory Committee") engaged in broad consultation with the artistic community throughout the Province over a ten month period prior to producing its report, *"in spirit and in law"*. As will be seen in this report, many though not all of the recommendations of the Advisory Committee have been implemented.

## Parameters

The objective of this report is to review the working environment for B.C. artists in order to identify the main problems faced by professional artists working in British Columbia and to formulate solutions.

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[4]**Canadian Conference of the Arts**, *A Brief History of the Status of the Artists Legislation in Canada*, at 7.

[5]**Canada**, Statistics Canada, 1996 Census, Labour Force 15 years and Over by Broad Occupational Categories and Major Groups and Sex, for Canada, Provinces and Territories, at 2.

Since neither time or budget permitted extensive oral consultation, written input was solicited. Submissions were received from organizations representing artists and from individual artists but few submissions were received from producers/engagers. Although submissions from the artistic community were invited, it was never the intention, given a limited time frame and budget, to engage in wide-spread consultation. Rather, this review focuses on developments in legislation and regulations since the "in spirit and in law" report of February, 1994, and an analysis of status of the artist legislation.

## A. Working Conditions for Artists: A Review of Legislative Developments following the report of the Advisory Committee on the Status of the Artist and recommendations for further action

The B.C. government has provided significant protection to workers in the cultural sector by extensive revisions to the *Employment Standards Act*, *Workers' Compensation Act* and related *Regulations* and guidelines. The B.C. government enacted three of the four general recommendations contained in the Advisory Committee's report. The recommendations dealing with collective bargaining rights for artists and art agency agreements were not acted upon.

### 1. *Employment Standards Act*

Prior to 1995, the only section of the *Employment Standards Act* which applied to workers in the cultural sector related to the payment of wages. Artists, musicians, performers and actors were specifically excluded from coverage under the remainder of the Act.

The Advisory Committee recommended extending the scope of the *Employment Standards Act* and *Regulations* to cover artists who are employees. This primary recommendation was accepted by the Thompson Commission and adopted by the government in 1995 by revisions to the *Employment Standards Act* and *Regulations*. The *Employment Standards Act* now applies to employees in the cultural sector, although dependent contractors and independent contractors remain excluded from coverage.

The Advisory Committee recommended that all contracts involving child actors be filed with the Director of Employment Standards or the Public Trustee for review based on industry standards and practices and on guidelines set in consultation with the industry. The Thompson Commission adopted some of these recommendations. In 1997, after an extensive 18 month consultative process, the Director of Employment Standards developed minimum conditions of employment for children in the film, television and radio commercial industry.[6] These conditions deal with a broad range of employment issues related to the safety and welfare of

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[6]Accomplished by the Director exercising his authority under Section 9 of the Act which prohibits employment of a child under the age of 15 without the permission of the Director.

child performers and include the responsibilities of the parent/guardian, hours of work, meal breaks, rest periods, educational conditions and protection of income.

The conditions governing child actors are currently under review in consultation with interested parties. Despite initial concerns related to the requirement for trust funds the reaction of the community has been positive. The committee will report March 1, 2000. Amendments to the conditions and regulations will follow.

The involvement of the Public Trustee in overseeing trusts for child performers is cumbersome, expensive and sometimes frustrating. The Public Trustee charges a set administration fee which comes out of each trust fund. The involvement of the Public Trustee (and the associated cost) is particularly difficult to justify with respect to a child performer who has minimal earnings. Earnings below a minimum threshold should be exempt from the trust requirement. Block trust funds would address some of these concerns and therefore should be explored.

The Advisory Committee's report contained extensive recommendations related to talent and booking agents to: require registration and regulation of agents, eliminate conflicts of interest, enable artists to obtain payment and provide a method of dispute resolution. These recommendations were largely accepted by the government in 1999 when it enacted Bill 65, the *Labour Statutes Amendment Act*, 1999, empowering the Director of Employment Standards to recover unpaid wages from a talent agency and on September 22, 1999, when regulatory standards were introduced dealing with licencing, fees and commissions for talent agents. Statistics regarding complaints to the Better Business Bureau demonstrate the success of these initiatives. Bogus talent agencies made the Better Business Bureau's list of top 10 scams of 1998. Following the amendments to the *Employment Standards Act*, complaints regarding talent agencies have declined dramatically.

Due to the aforementioned changes, British Columbia is the only jurisdiction in Canada which regulates child performers and talent agencies.

The Advisory Committee's recommendations regarding booking agents have not been implemented. The failure to regulate booking agents continues to be a significant problem in the music industry. Legislation eliminating conflicts of interest, by requiring agents to represent either the performer or the engager, and mandating a formalized contract stipulating the maximum commission payable is warranted.

2. <u>The Workers' Compensation Act and the Occupational Health and Safety Regulation</u>

The Advisory Committee recommended expansion of coverage under the *Workers' Compensation Act* and related enactments to include artists and the industries in which they work, with specific exemptions considering the best interests of artists and artistic productions.

Prior to January 1, 1994, the *Workers' Compensation Act* exempted "players, performers and

similar artists."

On January 1, 1994, Bill 63 extended coverage of the *Workers' Compensation Act* to performers by broadening the definition of employees and providing the Workers' Compensation Board ("W.C.B.") with the ability to extend coverage to individuals within the cultural sector who had previously been excluded. In the result, the *Workers' Compensation Act* and *Regulations* now apply to most performers who are employees or dependent contractors. Self-employed performers and employers are not required to be covered by the *Workers' Compensation Act* but may elect coverage by purchasing personal optional protection. Since complaints have been received that some self-employed individuals in the cultural sector cannot obtain registration under the *Workers' Compensation Act*, the prerequisites for obtaining personal optional protection need to be clarified and perhaps expanded.

The industry was concerned that Workers' Compensation regulations which had been developed for traditional industries would be inappropriate in the unique environment of the performing arts, particularly given the temporary nature of work and the sector's diverse employment arrangements and work sites. The W.C.B. established two committees, one from the live performing arts and the other from the movie, video and recording arts, to recommend proposals for safety and health regulations and safe work practices in their respective industries. Both committees submitted extensive recommendations, some of which were implemented in the Occupational Health & Safety Regulation (O.H. & S.)which came into effect April 15, 1998.

The community was disappointed many of the recommendations of the subcommittees were ignored, to the detriment of the sector:

> "But let us remember that the major objective was to find ways by which Workers' Compensation Regulations could ensure worker safety while permitting performing arts company to carry on their necessary activities. We are still woefully short of that goal."[7]

On March 23, 1998, Safety and Health in Arts Production and Entertainment ("SHAPE") was incorporated as a not-for-profit society, composed of producers/engagers, performers and others in the B.C. arts and entertainment industry. Its mission is to: promote safety and health awareness throughout the entertainment industry, develop safety programs and industry based safety and health policies and facilitate liaison with the W.C.B. Although independent from the W.C.B., SHAPE will be funded by the W.C.B. for five years. SHAPE continues to work closely with the W.C.B. to encourage the development of written guidelines to address the industry's concerns which were not dealt with in the O.H. & S. Regulations. Written guidelines should clarify the application of O.H. & S. to these unique industries and provide flexibility in enforcement. Written guidelines would be easier to obtain than amendments to regulations but

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[7] **I. Pratt**, *The OH & S Regulation and the Performing Arts*, (November 2, 1998), at 43.

would achieve the goal of ensuring worker safety without unduly burdening creativity or the ability of the industries to carry out their necessary activities. In one form or another, refinements, clarifications and exceptions to the regulations are necessary.

The inclusion of performing arts will undoubtedly place additional strains on the W.C.B. system. Performing artists are particularly susceptible to repetitive strain injuries. Performing artists will be asking the W.C.B. to extend coverage to injuries that can occur outside normal business hours, during practices and lessons. The W.C.B. has developed a flexible approach to coverage for individuals in other industries, such as fire and police, who injure themselves in extracurricular activities essential to their ongoing ability to perform their work related duties (such as working out in a gym).

Numerous and complicated compliance procedures produce barriers to compliance, particularly for small productions which are short term in nature. This problem could be addressed by the Ministry providing easy access to information, forms and documents on the Ministry website recommended later in this report.

Arts organizations are concerned with the financial implications associated with Workers' Compensation coverage, which increase with each new rate schedule. These concerns should be addressed when funding decisions are made. Specifically, funding should be increased to ameliorate the additional burden imposed on arts organizations by compulsory Workers' Compensation coverage.

3. Art Agency Agreements

The Advisory Committee recommended legislation to establish minimum provisions for art agency contracts and additional protections for visual artists and crafts people. After reviewing legislation from other jurisdictions (Quebec, Washington and Oregon) the Advisory Committee provided detailed proposals for legislation to require a written contract between visual artists or crafts people and those who display their work(s). The recommendations specified the issues which must be dealt with in such a contract including clauses dealing with ownership, fees and charges, and terms of payment. The recommended statute would apply only to those exhibitors who charged the artists a fee for inclusion in an exhibition or a commission should the exhibition result in a sale.

The B.C. government did not act on the Advisory Committee's recommendations.

The working conditions and needs of visual artists and crafts people are considerably different from those of performing artists. Few visual artists or crafts people have benefited from the extension of coverage of the *Employment Standards* and *Workers' Compensation Acts*. Many performers have chosen trade union representation and are covered by collective agreements. In other cases, collective agreements have been extended, by agreement, to cover performers who are not employees. Visual artists and crafts people, on the other hand, have shown little

inclination to organize for the purpose of collective bargaining. Consequently there is no association which addresses the contractual relationship between visual artists and art representatives or agents. Discrepancy in bargaining power frequently results in visual artists and crafts people entrusting their art works to agents without the benefit of a written contract, or even a verbal contract, governing the relationship.

Visual artists and crafts people have repeatedly requested legislation to provide protection in their relationships with dealers. As noted by the Advisory Committee "the possibility of agency bankruptcy is alone sufficient justification for formalizing their arrangements with art agents."[5]

There is virtually no cost to government associated with such legislation, except that arising from enforcement of penalties for non-compliance with the legislation. An Art Agency Agreement Act could be drafted easily and quickly based on the recommendations of the Advisory Committee and by reference to legislation from other jurisdictions.

**An Art Agency Agreement Act should be enacted to provide minimum protections to visual artists and crafts people by requiring a written contract between them and agents who deal with their works. Issues which must be dealt in such a contract include ownership of the work(s), rates and charges, and terms of payment. A model contract should be appended to the Act to facilitate compliance and reduce costs for all parties.**

4. Status of the artist legislation

Status of the artist legislation has developed to meet the unique concerns of the self-employed professional artist. Existing labour laws, including the B.C. Labour Code, deal with traditional employee - employer relationships. Independent contractors, such as artists, are excluded from the right to organize under the Labour Code. This model is therefore not responsive to the needs of artists, the majority of whom are self-employed professionals.

In 1987, Quebec implemented status of the artist legislation dealing with stage, film, television and sound recording artists. In 1988, Bill 78 extended coverage to writers, visual artists and crafts people. The Quebec Acts recognize artists as self-employed professionals and provide them access to certification and collective bargaining. Under the Quebec legislation a certified trade union becomes the exclusive bargaining agent for the sector.

In 1992, the federal government introduced status of the artist legislation which became effective in 1995. The federal legislation governs independent contractors under federal jurisdiction. Employees continue to be covered by the Canada Labour Code or the *Public Service Staff Relations Act*. The legislation provides for the negotiation of minimum scale agreements but

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[5]**Report of the B.C. Advisory Committee on the Status of the Artist**, *"in spirit and in law"*, (1994), at 30.

specifically empowers individuals to negotiate more favourable rights or benefits with their engagers.

Since most artists work within exclusive provincial jurisdiction, the federal government has invited the provinces to enact complementary legislation relating to status of the artist. Interestingly, the Canadian government recently stated: "The issue has been addressed in B.C. through amendments to related legislation."[9] Although not entirely correct, this reference recognizes the increased protections afforded artists in B.C. by amendments to the *Employment Standards Act*, *Workers' Compensation Act* and related *Regulations* and guidelines.

Quebec and Canada have established separate tribunals to adjudicate all matters arising under their status of the artist legislation.

The Advisory Committee recommended the issue of collective bargaining in the B.C. arts industries be added to the agenda of the Labour Code Review Committee. "in spirit and in law" proposed incorporating the rights associated with status of the artists legislation into the B.C. *Labour Code* by amending the definition of "dependent contractor" to include "artists". The Committee further recommended utilizing the existing Labour Relations Board, with the addition of an artist Vice Chair, rather than creating an Artists and Producers Professional Relations Tribunal as per the Federal Act.

The Advisory Committee's recommendations were not embraced by the community for a variety of reasons. Historically, the cultural sector has been hesitant to adopt the trade union model; for example, Canadian Actors' Equity is not a trade union although it has a long history of collective bargaining on behalf of its members. Most artists regard maintenance of their self-employed professional status to be imperative, particularly for tax purposes. Performing artists were particularly concerned with the Advisory Committee's recommendations. Consequently, the Canadian Conference of the Arts ("CCA") sought a legal opinion regarding whether the Advisory Committee's recommendations would jeopardize B.C. artists' self-employed status for purposes of taxation and ownership of copyright. The legal opinion concluded:

> "My reluctant conclusion therefore is that for at least the performing arts component of the artists who might be covered under the Code, the proposals represent a very serious potential practical problem vis a vis the year to year recognition of their tax status and barring some method to offer protection against unilateral engager actions which point to employed status, I would recommend that performing artists opt out of collective bargaining in the form which is

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[9]**Canada**, *Connecting to the Canadian Experience: Diversity, The Government of Canada's Response to "Sense of Place, A Sense of Being," The Ninth Annual Report of the Standing Committee on Canadian Heritage*, (Ottawa: Supply and Service Canada, 1999), Recommendation No. 6, at 1.

proposed."[10]

Despite their opposition to the specific proposals of the Advisory Committee, in March, 1999, the CCA recommended the governments "in the nine Provinces without status of the artist legislation move to develop and implement such legislation...".[11]

Status of the artist legislation is supported by organizations representing artists, such as the Writers' Guild, the Musicians' Union, the Canadian Association of Dance Artists and Canadian Actors Equity. These organizations advocate a separate statute with a dedicated tribunal to deal with the unique circumstances under which artists work. There is no indication of the degree of support emanating from individual artists and no input was received from producers/engagers.

Self-employed artists and artists who work for a variety of employers (and therefore do not qualify as dependant contractors), would benefit from status of the artist legislation. However, many individuals who would benefit from such legislation are already covered by scale agreements, containing minimum terms and conditions of employment, voluntarily recognized by producers/engagers. Although it has been suggested these voluntary arrangements have increasingly become the focus of legal attack, no B.C. examples were provided. While it is difficult to gauge the number of individuals who would benefit from such legislation, the Advisory Committee estimated their recommendation would provide 12,000 artists with access to the Code.[12]

In retrospect the Advisory Committee's proposal on status of the artists legislation attempted a simplistic solution to an extremely complex issue. The proposal to amend the definition of "dependent contractor" to include those who are essentially independent contractors is not viable.

Incorporating status of the artists legislation into the Labour Code presents numerous problems. Any initiative involving amendments to the Labour Code will provoke contentious debate throughout the Province. Extending coverage of the B.C. Labour Code to artists raises several legal problems and issues. Several organizations which represent artists across Canada would not qualify as trade unions under the Labour Code definition. Many artists' professional organizations are not provincial organizations as required by the Code. Some artists' organization could be challenged under the Code as being employer dominated. Artists often perform dual roles operating one day as an employee and the next as an employer. Some artists' associations include in their membership both employees and producers/engagers.

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[10]**A. Drache**, *Legal Opinion re Status of Artist in BC*, (April 14, 1994)[unpublished], at 8.

[11]**J. Harvey**, *A Portrait of Canadian Arts Services Organizations in 1999*, (Ottawa: Canadian Conference of the Arts, March, 1999), at 23.

[12]**Report of the B.C. Advisory Committee on the Status of the Artists**, *"in spirit and in law"*, (1994), at 59.

Separate legislation is preferable as it will permit a specialized legislative approach to address the unusual circumstances of this unique group of workers. A Status of the Artists Act would provide an opportunity to recognize the legal and social contributions of B.C. artists. Stand alone legislation would avoid the dependent contractor/employee debate so that artists' copyright or tax status would not be endangered.

Status of the artists legislation is a sectoral bargaining model which is justifiable for the cultural sector given its unique character and structure. Nonetheless, government should anticipate objections, such as those voiced during the debate on the restructuring of construction industry collective bargaining, that this is a further move towards sectoral bargaining across the province.

The inter-relationship between a status of the artists statute and the Labour Code would require careful deliberation by the Ministry of Labour to avoid inconsistencies and eliminate overlap.

Stand alone legislation with a separate labour relations tribunal would require a substantial investment to create an administrative structure and supporting infrastructure.[13] This would be an unnecessary duplication of the Labour Board's bureaucracy. Although the artistic community supports stand alone legislation with a dedicated tribunal, their concerns must be balanced against prohibitive political and economic costs. An appropriate compromise is a separate statute which utilizes the existing Labour Board's administration and facilities. Vice-Chairs, who have backgrounds in the arts and thus understand the unique working arrangements of artists, would be a necessary addition to the Labour Board. A single Board would ensure a co-ordinated approach to labour relations in the Province and prevent overlapping or competing certifications under the different statutes.

Issues arising under status of the artist legislation would require a substantial commitment of adjudicative resources. Therefore, although substantial cost savings would be realized by utilizing the existing Board as opposed to a stand alone tribunal, the Labour Relations Board would nonetheless require significant additional resources. The Labour Relations Board is already operating under considerable economic constraints. Unless substantial additional resources are provided the increased burden on the existing structure would be unmanageable and would adversely impact labour relations in the Province.

Status of the artist legislation will result in increased costs for artists and engagers/producers since it requires substantial commitment to and involvement in the legal process of recognition and collective bargaining. The process of organizing and negotiating first collective agreements is particularly costly for both sides. In addition to their labour relations responsibilities, labour

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[13]In 1998-99 the Canadian Tribunal spent $1.27 million: **Canadian Artists and Producers Professional Relations Tribunal**, "1998-1999 Performance Review", online: <http://homer.ic.gc.ca/capprt/perf99_e.html> (date accessed: January 21, 2000)

organizations historically have played a large service role for their members, providing a broad range of programs and services. Individual artists will be required to pay initiation fees and dues to support representation by their association.

The CCA has expressed concern regarding the burden of increasing the costs and responsibilities on these organizations:

> "This point was signalled in a warning by the federal tribunal in its recent decision to certify Canadian Artists Representation/Front des artistes canadiens (CARFAC National) to represent visual artists in federal jurisdiction. While the warning applied to CARFAC and the Canadian Crafts Council (CCC), it might in the future be relevant to other ASOs as well:
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> > *The Tribunal notes with concern the current circumstances of both CARFAC and the CCC. These are national organizations of artists and craftspeople and both groups find themselves understaffed and relying primarily on the support of volunteers for their operations since neither body receives government funding. One of the primary mandates of the Tribunal is to certify artists' associations as bargaining agents to secure, for artists, fair working conditions and adequate fees for their labour. Without adequate financial support, these artists' associations are unable to function on behalf of the artists for whom the* Status of the Artist Act *was established.*"[14]

The CCA proposed additional core funding from government for groups which are not self-financing. Such a proposal is unlikely to receive political support in B.C.

Producers/engagers will also incur additional expenses to support employer organizations to represent them in negotiating and administering collective agreements.

The impact of imposing additional costs on the cultural sector which already suffers financial burdens, and on financially strapped artists must be carefully weighed prior to enactment. An evaluation of the costs to the Province and the cultural sector may be prudent.

**Status of the artist legislation, whether by amendment to the Labour Code or by stand alone legislation and regardless of whether it utilizes a dedicated Tribunal or the existing B.C. Labour Relations Board, is a major initiative with wide ranging ramifications from both a labour relations and cost perspective. Broader consultation with the artistic community and the Ministry of Labour is required before enacting such legislation since**

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[14]supra., note 10, at 7.

**there is no consensus on the issue. If the decision is made to proceed with such an initiative, status of the artist legislation should be contained in a separate statute similar to the *Fishing Industry Collective Bargaining Act*, R.S.B.C. 1996 C. 150, and should utilize the B.C. Labour Relations Board. The Labour Board would require additional artist Vice Chairs and increased funding.**

5. Cultural Sectoral Council

The large number of self-employed workers in this sector present unique human resource challenges. Artists are required to operate as small businesses dealing with bookkeeping, tax implications, legal issues, health and safety matters. Many artists lack the training and computer literacy essential to their viability in the business world.

The sectoral council model is an alternative, collaborative approach, to deal with human resource issues. A cultural sectoral council is a voluntary advisory body, consisting of a wide range of stakeholders from the cultural sector. A sectoral council would address some collective issues normally advanced by trade unions, such as: training, professional development, working conditions, information and advocacy. However, through the collaborative efforts of all stakeholders in the sector, a sectoral council provides opportunities to address the needs of the entire sector in a cooperative fashion. A sectoral council can empower artistic workers and the organizations which engage, employ and support them to deal with the challenges of the new economy so that artists may realize their potential from both a creative and economic perspective.

The Cultural Human Resources Council (CHRC) is an independent, non-government organization at the national level which commenced operations May 1, 1995. HRDC received three year seed funding from the federal government through Human Resources Development Canada (HRDC). The objective of CHRC is to assist members of the sector "to achieve a better livelihood and better future by stimulating coordinated efforts to respond to career development and planning issues."[15] The CHRC encourages the introduction of the sectoral council model in the provinces by emphasizing the devolution of responsibility for training from the federal to the provincial level as occurred in B.C. in 1997. Ontario, Nova Scotia and Newfoundland have incorporated sectoral councils.

In September, 1998 the Director of Training and Human Resource Development of the Vancouver Cultural Alliance proposed the development of a British Columbia Cultural Sector Information, Resource and Referral Service, in part to facilitate the development of a cultural sectoral council. One of the goals of the centre is to provide timely access to relevant information on issues such as: arts grant programs, training programs, business expertise, entrepreneurial opportunities and job opportunities. This project has received partial funding. A

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[15] http://www.culturenet.ca-chrc-about-history.htm

steering committee composed of stakeholder groups has been established and a province-wide inventory survey has been completed. This work is a useful foundation for the establishment of a sectoral council in B.C.

A cultural sectoral council would undoubtedly benefit the working conditions of B.C. artists. Accordingly, **the Ministry should assist in the creation of a cultural sectoral council composed of artists, engagers/producers, labour leaders, business people, educators and government representatives to explore common concerns related to human resource development in the sector and identify possible solutions. Government funding, at least at the initial stages, will be required.**

6. Artists Legal Advice Program

As self-employed professionals, artists encounter a myriad of legal issues related to their work. Since many cultural workers are not members of trade unions or other professional organizations they do not have the collective resources to obtain legal advice. The majority of artists do not have incomes sufficient to retain independent legal advice.

Artists in Ontario have had access to a legal advice program since 1986. The Artists Legal Advice Services (ALAS) was established in 1985 by Canadian Artists Representation Ontario (CARO) and the Cultural Collective of the Law Union of Ontario. ALAS opened in Toronto in May, 1986, and in Ottawa in 1990. The Ontario Legal Aid Plan supports ALAS by paying duty counsel pursuant to its tariff but does not provide core funding. The lack of core funding has proved to be a significant problem. The Ontario program has relied heavily on the financial and administrative support of CARO which, until recently, provided appointment space, office space and office equipment and funded most of the costs of administration, promotion and employment of non-legal support staff. A $10.00 or "pay what you can" user-fee has recently been implemented.

The objective of ALAS is to improve artists' access to the law and provide education on legal issues. The service provides 30 minutes of summary legal advice to artists in a variety of disciplines, publishes educational fact sheets, presents seminars and workshops on legal issues relevant to artists such as copyright, contracts and income tax. In a recent survey, CARO members rated the importance of the ALAS service 4 out of 5.[16] The program is utilized by approximately 300 artists per year.[17]

In 1996 a proposal was made to the Vancouver Cultural Alliance (VCA), now called the Alliance for Artists & Culture, to establish an artists' legal advice service in Vancouver, modelled on the

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[16]Verbal report of Barbara Nelson, Executive Director, CARFAC Ontario.

[17]Verbal report of Monique Van Martel, President, ALAS.

Ontario program, to be housed in the VCA offices and promoted as a VCA project. The proposal did not require funding from the Legal Services Plan but relied on arts and entertainment lawyers who would volunteer their time as Duty Counsellors and presenters for seminars.[18]

The Legal Services Plan has developed in British Columbia to provide legal advice on particular issues to qualifying individuals. An Artists Legal Advice Program could be developed and funded under the umbrella of the Legal Services Plan. Obviously this would require considerable discussion with the Ministry of the Attorney General which is responsible for the Legal Services Plan.

The Legal Services Plan would require increased funding. Non-governmental sources of funding could also be explored. One potential source of non-governmental funding is the Law Foundation.

**An artists' legal advice program, to be funded at least in part by the Legal Services Plan, should be investigated in conjunction with the Ministry of the Attorney General. Lawyers with expertise in legal matters affecting artists would provide artists with free summary legal advice on any issue related to their art. This would require additional funding for the Legal Services Plan.**

7. Website Access

Artists require easy and affordable access to a wide range of information and forms relevant to their work.

**The Ministry should develop a method to disseminate information in an electronic format to facilitate education and communication within the cultural sector and to provide easy access to model contracts, government forms, grant applications and other documents. This could be accomplished either by the development of a comprehensive ministry website or by additions to an independent site.**

The website could also profile the works of B.C. artists and facilitate international distribution of their works.

B. Financial Issues

Although the issue of government financial support for the arts is beyond the mandate of this review, the issue is so integral to the working conditions of artists vis-à-vis its impact on their income, it was a primary theme in the vast majority of submissions received. It would, therefore,

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[18]**B. Harris**, *Proposal to Establish an Artists Legal Services in Vancouver*, (February 19, 1996) [unpublished].

be remiss for this report to ignore those proposals. Given the diversity of the proposals (which ranged from tax incentives and relief to increased grants and government funding for capital projects), it is impossible for this report to do more than superficially mention some of the themes and thereby alert government to the necessity of further consideration.

1. Tax incentives, credits and relief

In today's economic reality tax incentives and relief may be more viable than increased grants or capital projects. While issues of taxation are far beyond the mandate of this report, examples from other countries illustrate creative ways governments can assist the arts. The Republic of Ireland offers tax free status for resident artists, authors and actors. France exempts the first sale of original works of art from the Value Added Tax.

The Ministry, in conjunction with the Ministry of Finance, should explore tax relief for artists and artistic works. In particular, a tax credit for artists (against their Provincial income) and exempting the first sale of original works of art from the Provincial Sales Tax should be explored. Artists who are employees are not able to deduct the costs of equipment and supplies (e.g., musical instruments) necessary for their work. These costs can be significant. Relief against PST and/or tax credits for these purchases should be considered. Although the impact on the Provincial economy would likely be negligible, the benefit to the individual artist of these initiatives could be considerable.

Various tax incentive plans were received, including a tax credit plan for investors in sound recording projects and tax credits for venue owners and operators who engage musicians. Although the film industry has received considerable government assistance, the music industry (in particular the sound recording industry) has not. Nonetheless, there are many qualified musicians in British Columbia and significant production of independent recordings. Due to the high level of risk attached to such projects incentives for investors are required.

2. Funding

Under-funding is a constant concern in the cultural sector. The complaints of the musical community are particularly vociferous. Funding of the arts should be reviewed and increased. At a minimum, government funding should recognize the financial burden on arts organizations caused by Workers' Compensation coverage and should be increased to offset these additional costs.

The Advisory Committee recommendation to establish an arts council to administer arts funding was implemented by the creation of The Arts Council of B.C. pursuant to the *Arts Council Act*, R.S.B.C. 1996, c. 19. Several submissions contained complaints regarding the Council's funding decisions. One explanation may be that neither the composition of the Arts Council or its funding guidelines are understood.

3. Capital Projects

The B.C. government has invested considerable funds and energy in the film industry which has positively impacted the B.C. economy.

Despite the remarkable success of these initiatives, one facet of the film industry, the sound recording industry, has not benefited to its full potential. TV and motion sound tracks are not being recorded in Vancouver because there is no recording facility adequate to accommodate a major orchestra comprised of 70 to 100 musicians. The CBC studio, currently the largest recording facility in the Province, is too small, the equipment is inadequate and it does not have an adequate control room.

The B.C. Government should work with the industry to examine the need for a sound recording facility capable of accommodating major orchestras (70 - 100 musicians) for recording TV and movie sound tracks and, if warranted, explore the viability of expanding the sound recording infrastructure to include such a studio. Such an initiative would be consistent with government policy of supporting the film industry in the Province.